

**In the High Court of Uttarakhand, at Nainital.**

**Civil Misc. Writ Petition No. 295 of 2003 (S/B)**

Devi Dutt Pancholi S/o Late Sri M.D. Pancholi,  
Range Officer, presently posted at  
Dharasu Range, Uttarkashi Division,  
District Uttarkashi .. Petitioner

Versus

- 1- State of Uttarakhand through Secretary,  
Forest Department, Secretariat,  
State of Uttarakhand, Dehradun.
- 2- Principal Chief Conservator of Forest,  
Forest Department, State of Uttarakhand,  
Dehradun.
- 3- State of U.P. through Secretary Forest,  
Forest Department, Secretariat, Lucknow.
- 4- Principal Chief Conservator of Forest, Forest  
Department, State of U.P. 17-Rana Pratap  
Marg, Lucknow.
- 5- U.P. Public Service Commission through  
its Secretary, Public Service Commission  
Office, Allahabad .....Respondents.

Sri B.P. Nautiyal, learned counsel for the petitioner.  
Sri K.P. Upadhyaya, learned S.C. for respondent 1 & 2.  
Smt. Beena Pandey, learned S.C. for respondents 3 and 4.

**Coram: Hon'ble P.C. Verma, J.**  
**Hon'ble B.C. Kandpal, J.**

Dated: 28-03-2006

The petitioner has sought the following relief by way of the present writ petition :-

- (a) To issue a writ, order or direction in the nature of mandamus commanding the respondent Nos. 1 and 2 to give the seniority to the petitioner from 1987 or at least 1988 with all the consequential benefits.
- (b) To issue a writ, order or direction in the nature of mandamus commanding the respondents to grant the promotion to the petitioner w.e.f., 1997 or at least 1998

i.e. after 10 years service of the petitioner as Range Officer.

2- Brief facts of the case are that the petitioner was initially appointed on 03-03-1965 as Range Clerk in clear vacancy and was promoted as Forest Ranger in the year 1991, as his work was found excellent and satisfactory.

3- It is claimed in the writ petition that the petitioner should have been promoted Forest Ranger in the 1986-87, but for the reasons best known to the respondents, he was not given promotion. The petitioner has further claimed that Public Service Commission vide its letter dated 6-7-1991 intimated the respondent No.3 the approved list of the Deputy Ranger for promotion as Range Officer and the criteria for promotion was seniority subject to rejection of unfit. It is further claimed that as per the seniority list, which the Public Service Commission duly approved, the petitioner was at serial No. 87 and one Suresh Chandra Sharma was at serial No. 84 and this seniority relates to the year 1987-88. After promotion of the petitioner, he fall at serial No. 289 while Suresh Chandra Sharma at serial No. 286 in a defective seniority list which was notified on 17-7-1991. As the list was not prepared in accordance with the order dated 6-7-1991 passed by the Public Service Commission, in which the petitioner was shown at serial No. 87, therefore the petitioner made representation before the higher authorities, but all in vain.

4- A fresh seniority list was circulated on 30-5-1996 as stated in paragraph no. 13 of the petition and this list was also illegal and invalid as it was in violation of relevant service rules and direction of U.P. Public Service Commission. It is further alleged in the writ petition that Suresh Chandra Sharma challenged the seniority list and the Hon'ble Allahabad High Court (Lucknow Bench) in the writ petition filed by Suresh Chandra Sharma, directed the respondents to treat him as having been promoted substantively as Forest Ranger with effect from 1987-88 and to give all consequential benefits as well as to correct the impugned seniority list. The grievance of

the petitioner is that he should have been placed along with directly appointed or promoted persons on the post of Ranger in the year 1987 or at the most 1988, but on account of the inaction of the respondents, the present writ petition has been filed.

5- The counter affidavit has been filed by the Department and it is pleaded that when the seniority list was under preparation, a mistake was discovered that there was no vacancy of Ranger in promotion quota. Therefore, while preparing the final list the promotees getting excess of quota have been pushed down and the year-wise vacancies of direct recruits have been carried forward.

6- The petitioner has filed the rejoinder affidavit alleging therein that there were vacancies for promotees and there was no mistakes at all.

7- Heard the learned counsel for the parties and perused the record.

8- It would be pertinent to refer the relevant rules of “Uttar Pradesh Government Servants Seniority Rules, 1991” and Rules 5 to 8 of the aforesaid Rules relates to the determination of seniority, which run as follows:-

“5. Where according to the service rules appointments are to be made only by the direct recruitment the seniority *inter se* of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the Commission or the Committee as the case may be:

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final:

Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

Where in the same year, separate selections for regular and emergency recruitment, are made, the selection for regular recruitment shall be deemed to be the previous selection.

6. Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority *inter se* of persons so appointed shall be the same as it was in the feeding cadre.

A person senior in the feeding cadre shall, even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

7- Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority *inter se* of persons appointed on the result of any one selections shall be determined according to the date of the order of their substantive appointment in their respective feeding cadres.

Where the order of the substantive appointment in the feeding cadre specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases it will mean the date of issuance of the order:

Provided that where the pay scales of the feeding cadres are different, the persons promoted from the feeding cadre having higher pay scale shall be senior to the persons promoted from the feeding cadre having lower pay scale:

Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

8. (1) Where according to the service rules appointments are made both by promotion and by direct

recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of issuance of the order.

Provided further that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority *inter se* of persons appointed on the result of any one selection:-

- (a) through direct recruitment shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;
- (b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees *vis a vis* direct recruits shall be determined in a cyclic order (the first being a promotee) so far as may be in accordance with the quota prescribed for the two sources:

(1) Where the quota of promotees and direct recruits is in the proportion of 1:1 the seniority shall be in the following order:

- First - Promotee
- Second - Direct recruits

and so on.

(2) Where the said quota is in the proportion of 1:3 the seniority shall be in the following order:-

- First - Promotee
- Second to fourth - Direct recruits
- Fifth - Promotee
- Six to eight - Direct recruits

and so on.

Provided that-

(i) Where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year or years in which there are vacancies in accordance with the quota:

(ii) Where appointments from any source fall short of the prescribed quota and appointments against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees:

(iii) Where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year if they are appointed against the vacancies of their quota.”

9- Further Rule-9 of the aforesaid Rules relates with regard to the preparation of the seniority list, which runs as follows:

“9. (1) As soon as may be after appointments are made to a service, the appointing authority shall prepare a tentative

seniority list of the persons appointed ;substantively to the service in accordance with the provisions of these rules.

(2) The tentative seniority list shall be circulated amongst the persons concerned inviting objections, by a notice of reasonable period, which shall not be less than seven days from the date of circulation of the tentative seniority list.

(3) No objection against the vires or validity of these rules shall be intertainable.

(4) The appointing authority shall, after disposing off the objection, by a reasonable order, issue a final seniority list.

(5) It shall not be necessary to prepare a seniority list of the cadre to which appointments are made only by promotion from a single feeding cadre.”

10- The record reveal that on 30-1-1991 the Chief Conservator of Forest sent requisition intimating year-wise vacancies of the Eligibility List and on the basis of the requisition, the Public Service Commission sent recommendation on 6-7-1991, mentioning the persons found fit for promotion and allotting them year-wise allocation against the vacancies. Accordingly promotion orders were issued to the selected candidates, including the petitioner, but unfortunately the year of vacancy was not communicated therein. Had the petitioner been given seniority from 1987 or 1988 then after 10 years he would have become eligible for promotion as Assistant Conservator of Forest in U.P. Forest Service and would have got consequential benefits of Senior Scale, Selection Grade etc. However, unfortunately this was not done.

11- In view of the provisions made with regard to the determination of seniority the promotion to the post of Forest Ranger has to be done through Public Service Commission on the basis of seniority, subject to the rejection of unfit. Therefore, according to us the seniority is to be reckoned from the year of allocation, which in this case was 1987 to 1988 for which purpose the Chief Conservator of Forest had sent the requisition to the Public Service Commission and the Commission after following the procedure of promotion sent its

recommendation. The petitioner had been assigned for the vacancies against 1987 and 1988 in the recommendation letter dated 6-7-1991 sent by the Commission. Therefore, in our opinion the stand of the petitioner appears to be correct that he should be given seniority from 1987 or at least 1988. For the first time on 30-5-1996 the seniority list was issued and the petitioner was placed below the direct recruit of 1992, which in our opinion is arbitrary and illegal. Even if it was sought to be disturbed, the petitioner's allocation against 1987-88 vacancies, he should have given an opportunity of hearing, which was not done.

12- Our attention has also been invited towards a Division Bench decision of Allahabad High Court (Lucknow Bench) Suresh Chandra Sharma and others versus State of U.P. and others. The judgment cited before us reveals that the writ petition of Suresh Chandra Sharma, who was promoted along with the petitioner as Forest Ranger, was allowed and the respondents were directed to treat the petitioners in that writ petition, as having been promoted substantively as Forest Rangers with effect from 1987-88 and to give all consequential benefits. The facts of the case cited before us as well as the law laid-down by the Division Bench of Allahabad High Court in that case is applicable with its full force in the instant case.

13- For the aforesaid observations the writ petition is allowed.

14- The respondents are directed to treat the petitioner as having been promoted substantively as Forest Ranger, with effect from 1987-88 and to give him all consequential benefits and the petitioner should be given seniority accordingly.

**(B.C. Kandpal, J.)**

**(P.C. Verma, J.)**

